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10/568,617	02/16/2006	Peter Wolfgang	60291000045	9357
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HUNTON & WILLIAMS LLP INTELLECTUAL PROPERTY DEPARTMENT 1900 K STREET, N.W. SUITE 1200 WASHINGTON, DC 20006-1109			KIRSCH, ANDREW THOMAS	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/568,617	<b>Applicant(s)</b> WOLFGANG ET AL.
	<b>Examiner</b> ANDREW T. KIRSCH	<b>Art Unit</b> 4159

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-26 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-26 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08) \_\_\_\_\_  
Paper No(s)/Mail Date 01/2006.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Specification***

1. The abstract of the disclosure is objected to because it contains the self evident clause "The invention comprises..." Examiner recommends the clause be omitted so the abstract will read "A lever ring to be connected to a body..." Correction is required. See MPEP § 608.01(b).

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The disclosure is objected to because of the following informalities: Page 1 of the specification must include a statement of the claim to foreign priority. Appropriate correction is required.

4. The disclosure is objected to because of the following informalities: page 4 recites "deflection u" with no accent over it (i.e.: ü), Examiner assumes for the purposes of examination that "ü" represents the deflection; page 5, line 1 should be changed to read "lid rim 2" to be consistent with the rest of the specification; page 5, line 29 recites "the inner surface 1" previously referred to as the membrane; element 1a on Fig. 4b is never mentioned in the specification.

Appropriate correction is required.

***Claim Objections***

5. Claim 9 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 2 includes the limitation of "the flat web extends upwardly inclined from a horizontal plane and is provided with an inner curling on its radially inner end..." Claim 9 is dependent on claim 2 and attempts to add the limitation of "wherein the flat web comprises radially inwards an inner curling."

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 3-7, which depend on claim 2, recite the limitation "the angle differing from zero" and "the angle ( $\alpha 2$ )."  
There is insufficient antecedent basis for this limitation in claim 2.

8. For the purposes of examination, examiner assumes "the angle differing from zero" and "the angle ( $\alpha 2$ )" are the angle of the flange relative to the plane of the closure layer as described in claim 1.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-3, 5, 8-12, 14-15, 17, 20-24 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. PG Pub No. 2002/0050493 (Ball et al. hereinafter).

11. In re claim 1, with reference to Figs. 12 and 13 below, Ball et al. discloses: A lever ring for seaming to a body and for receiving a closure layer (28) affixed with an edge by means of sealing (46) and for bridging an inner space of the lever ring, to close the body in a seam-connected position (page 9, paragraph [0095]), wherein (i) the lever ring comprises a continuous flat web (30) which radially outwardly changes into an edge rim (see Fig. 12) of the lever ring, a continuous groove (see Fig. 12) extending between the edge rim and the flat web; (ii) the flat web is suitable for connecting an edge of the closure layer (28), that has been connected by such sealing, at an angle (see Fig. 12) differing from zero (page 7, paragraph 76).

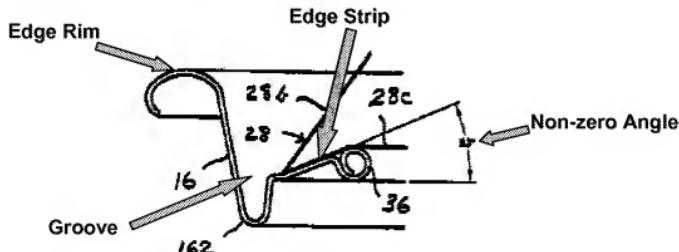


FIG. 12

Fig. 12 of U.S. PG Pub No. 2002/0050493 (Ball et al. hereinafter)

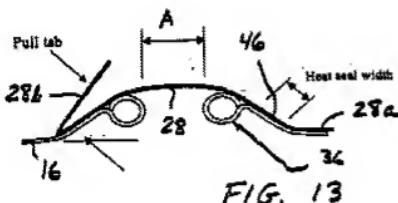
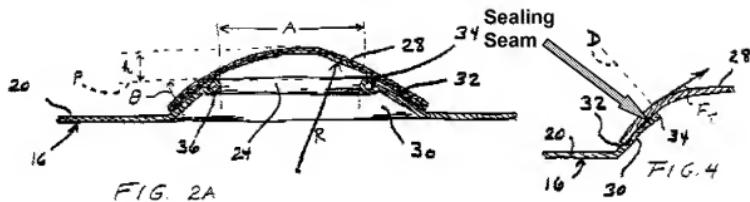


Fig. 13 of U.S. PG Pub No. 2002/0050493 (Ball et al. hereinafter)

12. In re claim 2, with reference to Figs. 12 and 13 above and 2A and 4 below, Ball et al. discloses: A lever ring for seaming to a body and for receiving a closure layer (28) affixed with an edge by means of sealing (46) and for bridging an inner space of the lever ring, to close the body in a seam-connected position (page 9, paragraph [0095]), wherein (i) the lever ring comprises a continuous flat web (30) which radially outwardly changes into an edge rim (see Fig. 12) of the lever ring, a continuous groove (see Fig. 12) extending between the edge rim and the flat web; (ii) the flat web (30) extends upwardly inclined from a horizontal plane and is provided with an inner curling (36) on its radially inner end so that a closure layer (28) affixed to it by sealing introduces a substantial force component ( $F_T$ ) into a sealing seam (46), so that the force component extends in an extension direction of the sealing seam, upon a pressure force acting vertically to a plane of extension of the closure layer (page 7, paragraph 84).



Figs. 2A and 4 of U.S. PG Pub No. 2002/0050493 (Ball et al. hereinafter)

13. In re claims 3 and 15, with reference to Fig. 12 above, Ball et al. discloses the claimed invention including wherein the angle differing from zero is between substantially 10° and substantially 90° (see Fig. 12: "23°").
14. In re claims 5 and 17, with reference to Fig. 12 above, Ball et al. discloses the claimed invention including wherein the angle ( $\alpha_2$ ) is between substantially 25° and 35° (page 7, paragraph 76).
15. In re claims 8 and 20, with reference to Figs. 2A, 4 and 13 above, Ball et al. discloses the claimed invention including wherein said receiving of the closure layer (28) is a sealing of an edge of the closure layer by a sealing strip (46) on the flat web (30) which sealing strip extends circumferentially (page 6, paragraph 74).
16. In re claims 9 and 21, with reference to Fig. 12 above, Ball et al. discloses the claimed invention including wherein the flat web (30) comprises radially inwards an inner curling (36).
17. In re claims 10 and 22, with reference to Fig. 12 above, Ball et al. discloses the claimed invention including wherein the closure layer (28) extends on the inner curling (36) and is deflected ( $\ddot{\cup}$ ) so that an edge strip (see Fig. 12) is formed, which extends at

an angle differing from zero (see Fig. 12), with respect to the plane of the closure layer (28) in the inner area of the lever ring.

18. In re claims 11 and 23, with reference to Fig. 12 above, Ball et al. discloses the claimed invention including wherein the closure layer (28) is formed as a membrane made of one or more materials selected from a group consisting of: plastic, sheet metal, metal foil, and compound foil (page 6, paragraph 73).

19. In re claims 12 and 24, with reference to Fig. 13 above, Ball et al. discloses the claimed invention including wherein the sealing seam as a strip extending circumferentially (46) has a substantial width on the extension of the flat web (30), this width being more than half the width of the flat web.

20. In re claims 14 and 26, with reference to Fig. 12 above, Ball et al. discloses the claimed invention including wherein the groove (see Fig. 12) is of a wedge-shaped design with a rounded bottom and is formed between a chuck wall extending towards the lid rim (2) and the flat web (30) that is oriented in an inclined fashion.

#### ***Claim Rejections - 35 USC § 103***

21. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

22. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

23. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

24. Claims 4, 6-7, 16, 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ball et al.

25. In re claims 4 and 16, with reference to the Figures above, Ball et al. discloses the claimed invention except wherein the angle (a2) is between substantially 40° and 60°.

26. However, Ball et al. teaches that slope angle of the flange (flat web) should be chosen to be sufficiently large so as to be compatible with the bulging characteristic of the chosen closure member material (page 7, paragraph 85).

27. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have interpreted the teaching of Ball et al. and realized various

angles based on the selection of the closure layer (28) material. This teaching alludes to the relationship between the closure layer material and angle under circumstances that would require a larger or steeper angle even though Ball et al. only discloses a range of angles from "about 12.5 degrees" to "about 30 degrees."

28. In re claims 6 and 18, with reference to the Figures above, Ball et al. discloses the claimed invention except wherein the angle ( $\alpha 2$ ) is between substantially 80° and 90°.

29. However, as described above, Ball et al. teaches a relationship between the closure layer material and the angle of the flat web (page 7, paragraph 85).

30. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have interpreted the teaching of Ball et al. and realized various angles based on the selection of the closure layer (28) material. It would not have been unreasonable to have arrived at an angle between substantially 80 and 90 degrees based on the selection of material for the closure layer as well as the internal pressure characteristic of the desired stored contents which relates directly to the peeling and tensile forces imparted on the closure layer (page 7, paragraph 83).

31. In re claims 7 and 19, with reference to the Figures above, Ball et al. discloses the claimed invention except wherein the angle differing from zero extends substantially vertically to the extension of the plane of the closure layer (28).

32. However, as described above, Ball et al. teaches a relationship between the closure layer material and the angle of the flat web (page 7, paragraph 85).

33. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have interpreted the teaching of Ball et al. and realized various angles based on the selection of the closure layer (28) material. It would not have been unreasonable to have arrived at an angle between substantially 80 and 90 degrees (i.e.: substantially vertical) based on the selection of material for the closure layer as well as the internal pressure characteristic of the desired stored contents which relates directly to the peeling and tensile forces imparted on the closure layer (page 7, paragraph 83).

34. Claims 13 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ball et al. as applied to claims 1 and 2 above, and further in view of U.S. Patent No. 6,082,944 (Bachmann et al. hereinafter).

35. In re claims 13 and 25, with reference to the Figures above, Ball et al. discloses the claimed invention including an alignment of the flat web that projects steeply upwards.

36. Ball et al. fails to disclose wherein the inner curling axially projects above an upper side of the lid rim.

37. However, with reference to Fig. 2 below, Bachmann et al. discloses a can end configuration with a removable closure layer (14), in which an inner curling (30) axially projects above an upper side of the lid rim (see Fig. 2).

**FIG.2**

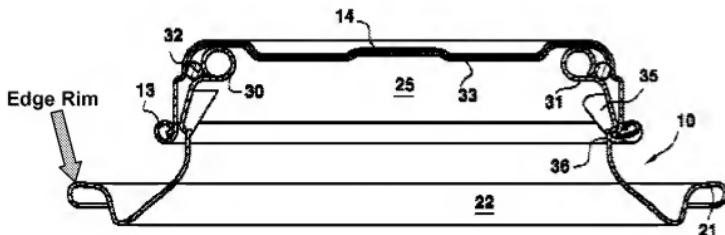


Fig. 2 of U.S. Patent No. 6,082,944 (Bachmann et al. hereinafter)

38. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the curl of Ball et al. to be elevated in relation to the upper side of the lid rim as taught by Bachmann et al. Such a modification would have allowed for improved mouth construction for better pouring and drinking comfort (column 2, lines 15-23).

#### ***Conclusion***

39. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 5,069,355 to Matuszak discloses an easy-opening closure for sealing with a vertical sealing section. U.S. Patent No. 5,752,614 to Nelson et al. discloses an easy-opening closure for sealing with curled sections and a pull tab.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW T. KIRSCH whose telephone number is

(571)270-5723. The examiner can normally be reached on M-F, 8am-5pm, off alt. Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew T. Kirsch/  
Examiner, Art Unit 4159

/Anthony D Stashick/  
Anthony D Stashick  
Supervisory Patent Examiner, Art Unit 3781